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FILED
STATE OF CALIFORNIA
BOARD OF PSYCHOLOGY
SACRAMENTO *June 18, 2012*
BY *Alfred Morales*

8 **BEFORE THE**
9 **BOARD OF PSYCHOLOGY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 1F-2010-211945

12 **DAVID J. JIMENEZ, PH.D.**
13 **2566 Overland Avenue, Suite 500 A**
Los Angeles, California 90064
14 **Psychologist's License No. PSY 10629**

A C C U S A T I O N

15 Respondent.

16 Complainant alleges:

17 PARTIES

- 18 1. Robert I. Kahane, J.D. (Complainant) brings this Accusation solely in his official
19 capacity as the Executive Officer of the Board of Psychology, Department of Consumer Affairs.
20 2. On or about August 4, 1988, the Board of Psychology issued Psychologist's License
21 Number PSY 10629 to DAVID J. JIMENEZ, Ph.D. (Respondent). The Psychologist's License
22 was in full force and effect at all times relevant to the charges brought herein and will expire on
23 November 30, 2013, unless renewed.
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JURISDICTION

3. This Accusation is brought before the Board of Psychology ("Board"), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code ("Code") unless otherwise indicated.

4. Section 2960 of the Code states, *inter alia*:

"The board may refuse to issue any registration or license, or may issue a registration or license with terms and conditions, or may suspend or revoke the registration or license of any registrant or licensee if the applicant, registrant, or licensee has been guilty of unprofessional conduct. Unprofessional conduct shall include, but not be limited to:

"(j) Being grossly negligent in the practice of his or her profession.

"(r) Repeated acts of negligence."

5. Section 2964.5 of the Code states:

"The board at its discretion may require any licensee placed on probation or whose license is suspended to obtain additional professional training, to pass an examination upon the completion of that training and to pay the necessary examination fee. The examination may be written or oral or both, and may include a practical or clinical examination."

6. Section 2964.6 of the Code states:

"An administrative disciplinary decision that imposes terms of probation may include, among other things, a requirement that the licensee who is being placed on probation pay the monetary costs associated with monitoring the probation."

7. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

1 APPLICABLE RULES, REGULATIONS AND GUIDELINES

2 8. California Rules of Court ("CRC"), section 5.220, subdivision (c), provides, *inter*
3 *alia*, as follows:

4 "For purposes of this rule:

5 "(1) A 'child custody evaluator' is a court-appointed investigator as defined in Family
6 Code section 3110.

7 "(3) A 'child custody evaluation' is an expert investigation and analysis of the health,
8 safety, welfare, and best interest of children with regard to disputed custody and visitation issues.

9 "(4) A 'full evaluation, investigation, or assessment' is a comprehensive examination
10 of the health, safety, welfare, and best interest of the child.

11 9. CRC, section 5.220, subdivision (e), provides, *inter alia*, as follows:

12 "All evaluations must include:

13 "(1) A written explanation of the process that clearly describes the:

14 "(A) Purpose of the evaluation;

15 "(B) Procedures used and the time required to gather and assess information
16 and, if psychological tests will be used, the role of the results in confirming or
17 questioning other information or previous conclusions;"

18 10. CRC, section 5.220, subdivision (h), provides, *inter alia*, as follows:

19 "In performing an evaluation, the child custody evaluator must:

20 "(1) Maintain objectivity, provide and gather balanced information for both parties, and
21 control for bias;

22 "(2) Protect the confidentiality of the parties and children in collateral contacts and not
23 release information about the case to any individual except as authorized by the court or statute;

24 "(5) Strive to maintain the confidential relationship between the child who is the
25 subject of an evaluation and his or her treating psychotherapist;

26 "(9) Not disclose any recommendations to the parties, their attorneys, or the attorney
27 for the child before having gathered the information necessary to support the conclusion;
28

1 “(10) Disclose to the court, parties, attorney for a party, and attorney for the child
2 conflicts of interest or dual relationships;...”

3 11. CRC, section 5.225, subdivision (l), provides, *inter alia*, as follows:

4 “A person appointed as a child custody evaluator must:

5 “(2) At the beginning of the child custody evaluation, inform each adult party of the
6 purpose, nature, and method of the evaluation...”

7 “(3) Use interview, assessment, and testing procedures that are consistent with
8 generally accepted clinical, forensic, scientific, diagnostic, or medical standards;

9 “(6) Before undertaking the evaluation or at the first practical moment, inform the
10 court, counsel, and parties of possible or actual multiple roles or conflicts of interest.”

11 12. CRC, section 5.235, subdivision (c), provides as follows:

12 “In any child custody proceeding under the Family Code, ex parte communication is
13 prohibited between court-connected or court-appointed mediators or evaluators and the attorney
14 for any party, a court-appointed counsel for a child, or the court, except as provided by this rule.”

15 13. CRC, section 5.235, subdivisions (d) and (e), set forth six circumstances in which
16 ex parte communications between a court-appointed evaluator and the attorney for any party, the
17 court-appointed counsel for the child, or the court, are permitted. None of those circumstances
18 were present during Respondent’s court-appointed evaluation.

19 14. The “Model Standards of Practice for Child Custody Evaluation” published in
20 2006 by the Association of Family and Conciliation Courts, provide, *inter alia*, as follows:

21 “Preamble Section P1: Child custody evaluators are qualified mental health professionals
22 who function as impartial examiners.

23 “Section 2.2: Child custody evaluators shall have an understanding of the fundamental
24 legal rights of those who are part of the evaluation process and shall conduct themselves in such a
25 manner as to not violate or diminish those rights.

26 “Section 4.4: Child custody evaluators shall not have substantive *ex parte* communications
27 about a case with the Court or with the attorney’s [sic] representing the parties.

28 “Section 4.5: Child custody evaluators shall refrain from making interim recommendations.

“Section 5.3: Child custody evaluators shall strive to be accurate, objective, fair and independent in gathering their data...

“Section 5.5: Child custody evaluators shall strive to use a balanced process in order to increase objectivity, fairness and independence.

“*Section 8.1:* Child custody evaluators shall strive for objectivity and shall take reasonable steps to avoid multiple relationships with any and all participants of an evaluation.

“Section 8.4: Child custody evaluators shall not offer advice or therapeutic interventions to anyone involved in the child custody process.”

15. The “Guidelines for Child Custody Evaluations in Family Law Proceedings,” published by the American Psychological Association in 2009, provide, *inter alia*, as follows:

“General Guideline II(5): Psychologists strive to function as impartial evaluators.

“General Guideline II(7): Psychologists strive to avoid conflicts of interest and multiple relationships in conducting evaluations.

“General Guideline II(9): Psychologists strive to obtain appropriately informed consent.”

16. The “Ethical Principles of Psychologists and Code of Conduct,” section 3.10, published by the American Psychological Association in 2002, provides as follows:

“When psychologists conduct research or provide assessment, therapy, counseling or consulting services in person or via electronic transmission or other forms of communication, they obtain the informed consent of the individual or individuals using language that is reasonably understandable to that person or persons except when conducting such activities without consent is mandated by law or governmental regulation or as otherwise provided in this Ethics Code.”

FACTS

17. Mother and Father¹ are the parents of the minor, JA, born October 13, 1997, during the marriage between Mother and Father. JA has been diagnosed as having high functioning autism.

¹ The parents of the minor child, JA, are identified herein by the terms "Mother" and "Father," in order to protect their privacy. The minor child is referred to by his initials in order to (continued...)

1 18. The marriage of Mother and Father was dissolved on May 1, 2008, pursuant to a
2 judgment of dissolution entered in Orange County Superior Court. Pursuant to that judgment,
3 Mother and Father initially shared joint legal custody of JA.

4 19. Thereafter, Mother petitioned the Court, seeking full legal custody of JA and the
5 right to make all decisions regarding his schooling and medical treatment. On or about July 21,
6 2010, pursuant to a stipulation between Mother and Father, and an order of the Court, Respondent
7 was appointed as an Evidence Code 730 Custody Evaluator. The stipulation and order provided,
8 in pertinent part, that “[t]he parties and the minor child shall submit to a full psychological
9 evaluation, including any psychological testing deemed necessary, with [Respondent], for the
10 purpose of making a recommendation as to child custody. The parties shall cooperate with
11 [Respondent] in making appointments, providing any requested information, and signing any
12 releases for information [Respondent] deems necessary.”

13 20. On or about July 19, 2010, Respondent sent Mother and Father a boilerplate letter
14 (“Cover Letter”) addressed “Dear Counsel or Parent,” and an enclosed “Contractual Agreement &
15 Letter of Engagement for Psychological Child Custody Evaluation” (“Engagement Letter”). The
16 Engagement Letter constituted a formal, binding contract between Respondent, Father and
17 Mother.

18 21. The Cover Letter states, *inter alia*, “It is my custom and practice not to review
19 anything that has not been sent in advance to the opposing counsel or party (if not represented by
20 counsel).”

21 22. The Engagement Letter states, in pertinent part, that Respondent’s child custody
22 evaluation “may include (but may not be limited to): Review of court records and documents;
23 School, medical, psychological, and psychiatric records; School site visit/s; Announced and
24 unannounced home visit/s; Psychological testing; Announced and unannounced referral/s for
25 drug/alcohol testing; Review of computer Internet electronic records, and: Interview with any
26 person/s or collateral/s deemed advisable by the evaluator. [Respondent] retains the right to

27 _____
28 protect his privacy.

1 *determine, in his professional opinion, the information he deems significant and relevant to this*
2 *custody matter, which includes collaterals selected by him to be interviewed and the number of*
3 *collaterals interviewed.”*

4 23. Because Respondent stated that he could not complete the evaluation before school
5 was scheduled to begin, Mother and Father entered into a further stipulation allowing Respondent
6 to bifurcate the issue of JA’s school placement from the remainder of the evaluation, and to
7 decide that matter on an interim basis pending the completion of his full evaluation.

8 24. Throughout the time that Respondent was purporting to act as a Custody
9 Evaluator, he often, and repeatedly, exceeded the scope of his role as Custody Evaluator and
10 undertook communications, activities, and interventions reserved for an individual serving as a
11 Special Master, including making recommendations, directing Father to engage in certain
12 activities, and intervening into the therapeutic relationship between JA and his psychiatrist.
13 Moreover, the activities he undertook as Custody Evaluator, including his inappropriate interim
14 recommendations, directives and interventions, were colored by his obvious bias in favor of
15 Mother, as reflected in the circumstances set forth immediately below in subparagraphs (a)
16 through (x), and as finally reflected in his January 3, 2011, report to the Court. Additionally,
17 Respondent violated JA’s psychiatric treatment confidentiality, as more specifically set forth in
18 paragraph 25 herein. Specifically, while purporting to act as an impartial Custody Evaluator,
19 Respondent :

20 a. Failed to obtain informed consent from Mother and Father for Respondent to make the
21 recommendations, directives and interventions described herein;

22 b. Issued, on August 19, 2010, a written recommendation, solely at Mother’s request, in
23 which he cited Penal Code section 273, subdivision (a) (child endangerment), and in which he
24 strongly discouraged Father from taking JA on a boat trip to Catalina Island, despite Respondent
25 knowing nothing about Father’s skill as a boat operator, the type of boat to be used, or the
26 weather and water conditions under which the trip would be taken;

27 c. Recommended, on September 2, 2010, that the frequency of JA’s visits with his
28 psychiatrist be increased, without consulting JA’s psychiatrist;

1 d. Directed Father, on October 16, 2010, solely at Mother's request, to stop making a "life
2 mask" with JA to commemorate JA's becoming a teenager;

3 e. On November 1, 2010, accepted, as partial payment from Mother, a check from
4 Mother's second husband drawn on a Wachovia Bank account, despite the express payment terms
5 outlined in the Engagment Letter, that all future interim and final payments must be made by
6 Chase Bank cashier's checks payable to Custody Care, Inc., and despite requiring that all of
7 Father's payments be made by Chase Bank cashier's checks or check's drawn on Father's
8 attorney's client trust account;

9 f. On November 1, 2010, sent an ex parte communication, via email to Mother and
10 Mother's attorney;

11 g. On November 3, 2010, sent an ex parte communication, via email, to Mother and
12 Mother's attorney

13 h. Made an unannounced visit to Father's house, on November 29, 2010, to satisfy
14 himself of the veracity of Father's previous statements, under penalty of perjury, that he had no
15 firearms in his home, while making no similar visit to Mother's home despite her actually having
16 a firearm in her home;

17 i. Recommended, during the home visit of November 29, 2010, that Father's knife
18 collection be secured under lock and key;

19 j. Issued, on November 30, 2010 (following the unannounced home visit the evening
20 before), a written recommendation that Father's knife collection be secured under lock and key;

21 k. Directed Father, in writing on December 3, 2010, to lock said knives in a location not
22 known to JA, and to provide Respondent with photographic proof of same, no later than 5:00 p.m.
23 on December 6, 2010, along with a written statement documenting said safety precautions and
24 explaining why Father had not already complied with Respondent's November 29, 2010,
25 recommendation;

26 l. After receiving Father's photographs and written statement, documenting the securing
27 of the knife collection, directed Father, via e-mail on Decmber 6, 2010, to demonstrate how the
28 key to the collection would be made inaccessible to JA;

1 m. Told Father's and Mother's attorneys, during a conference call on December 10, 2010,
2 that it was his opinion that Father's thinking was linear and one-dimensional, and that Father's
3 parenting style was comparable to playing checkers while Mother's parenting style was
4 comparable to playing chess;

5 n. Recommended, on December 10, 2010, that an individualized education program (IEP)
6 meeting be scheduled to modify JA's educational program, a recommendation that was
7 confirmed in writing on December 12, 2010;

8 o. Despite writing, on December 3, 2010, regarding his November 29, 2010, inspection
9 at Father's home, that "I also inspected two or three small pocket knives in [JA's] bedroom,
10 which did not cause me concern," sent Father an e-mail at 10:10 p.m. on December 12, 2010, and
11 called Father at 10:15 p.m. that same evening, directing Father to appear in Respondent's office
12 the next day at 2:00 p.m. to explain how he allowed JA to take a pocket knife to Mother's house
13 the previous day, stating that the directive was "non-negotiable;"

14 p. At a meeting at Respondent's office on December 13, 2010: read Father the definition
15 of criminal child endangerment from Penal Code section 273, subdivision (a); informed Father
16 that, in Respondent's opinion, Father's allowing JA to take a pocket knife to Mother's house the
17 previous day constituted criminal child endangerment; informed Father that he was contemplating
18 making a report to Child Protective Services; told Father that Father's thinking was "box-like"
19 when it came to assessing JA's safety needs; directed Father to survey his residence and
20 surrounding property for safety hazards; and directed Father to submit a "final safety plan" to
21 Respondent within one business day (without, then or subsequently, directing Mother to survey
22 her property for safety hazards or prepare a "safety plan");

23 q. On December 14, 2010, e-mailed Father, directing him to fax Respondent a list of
24 possible safety hazards at father's home;

25 r. On December 14, 2010, wrote to Father's and Mother's counsel: (1) informing them
26 that Respondent had "directed" Father to conduct an inspection of the living areas of his home,
27 yard, garage, driveway, storage areas, boat, and JA's bedroom to identify potential safety hazards
28 such as flammables, and to present him with a written safety plan; (2) further directing Father to

1 “include in the plan potential risks, the specific actions he will undertake to minimize these risks,
2 the actions that he has taken today, and a timeline for addressing these potential risks to [JA] in
3 the event he cannot take immediate action today;” (3) mandating that Father consult with his
4 attorney prior to faxing the the safety plan to Respondent; and (4) directing Father to participate
5 in JA’s next psychiatric session and discuss the “knife incident” at said session;

6 s. On an undisclosed date, took into his possession a pocket knife owned by JA;

7 t. On December 20, 2010, the same date that he appeared at an ex parte hearing in
8 connection with Father’s motion requesting Respondent’s removal as Child Custody evaluator
9 (the full hearing of which was set for January 21, 2011) Respondent chose to: (1) begin
10 performing the bulk of his activities on the evaluation; (2) begin preparation of his final
11 evaluation report (for which his final bill amounted to nearly \$42,000.00); and (3) complete his
12 evaluation and submit report to the Court prior to the January 21, 2011, hearing;

13 u. On December 22, 2010, communicated directly to the Special Education Diriector of
14 the Laguna Beach Unified School District his request that an IEP meeting be scheduled to review
15 JA’s educational program;

16 v. On December 30, 2010, wrote a letter to Father’s attorney, informing her that any
17 further communication from Father would be interpreted as an attempt to interfere with, and
18 delay, the evaluation (although Respondent placed no such limitation on further communications
19 with Mother and, in fact, conducted an individual interview with mother that same day);

20 w. On January 4, 2011, in a letter of that date, stated that he would release his final report
21 to Father and Mother only upon receipt of full payment of his bill;

22 x. On January 7, 2011, wrote a letter to Father’s attorney, in which he incorrectly stated
23 that allegations made by Father in a complaint to the Board of Psychology had been determined
24 by the Court to be meritless on December 20, 2010;

25 y. On January 10, 2011, in response to a written request from Mother’s attorney, offered
26 to release his final report, to one party only, upon payment of one-half of his bill, in direct conflict
27 with his letter of January 4th and the express terms of the Engagement Letter.
28

1 z. On or before the January 21, 2011, hearing of Father's motion, submitted ex parte
2 communications to Superior Court Judge Clay Smith, specifically: Respondent's final evaluation
3 report and a cover letter, neither of which had been served on counsel for Father or Mother;

4 aa. After advising Father and Mother, in his July 19, 2010, Cover Letter, that he would
5 not review anything "*that has not been sent in advance to the opposing counsel,*" accepted from
6 Mother and Mother's husband, and reviewed, throughout the evaluation period, approximately
7 247 pages of documents that clearly were not copied to Father's attorney, many of which were
8 extremely prejudicial to Father, derogatory, and untrue;

9 bb. Never disclosed to Father that he had received and reviewed said 247 pages of
10 documents.

11 25. During the course of his evaluation, Respondent requested, and obtained, a
12 complete copy of JA's treatment records with his psychiatrist. Following completion of the
13 evaluation, Respondent produced, to Mother and Father, a complete copy of his file, including
14 JA's psychiatric records, making no effort or provision to protect the confidentiality of said
15 records. As a direct result of said breach of confidentiality, JA's psychiatrist, after two and one
16 half years of treatment, resigned as JA's psychiatrist, stating, in a March 4, 2011, letter, "*[i]n*
17 *light of [JA's] psychiatric records being made available to both parents, I feel the confidential*
18 *environment that was once provided for [JA] in our work no longer exists and thus further*
19 *progress in our work is compromised.*"

20 FIRST CAUSE FOR DISCIPLINE

21 (Unprofessional Conduct: Gross Negligence)

22 26. Respondent is subject to disciplinary action under section 2960, subdivision (j) of the
23 Code in that, while acting as a court-appointed Custody Evaluator, he repeatedly exceeded the
24 scope of that role, and undertook communications, activities, and interventions reserved for an
25 individual serving as a Special Master, including making inappropriate interim recommendations,
26 issuing directives to Father, and intervening into the therapeutic relationship between JA and his
27 psychiatrist. The specific circumstances are set forth in paragraphs 19 through 25, which are
28 incorporated by reference herein.

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3. Taking such other and further action as deemed necessary and proper.

DATED: June 18, 2012



ROBERT T. KAHANE, J.D.
Executive Officer
Board of Psychology
Department of Consumer Affairs
State of California
Complainant

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